While the Sixth Circuit's reliance upon the Barrier decision up to this point in their analysis is correct, it is the next step taken by the Court in Barrier that directly conflicts with the conclusion drawn by the appellate court. Specifically, in Barrier, the Court went on to state that 28 C.F.R. §2.44, particularly subsection (d), must further be construed consonant with the statutory delineation of the Parole Commission's jurisdiction as enunciated by 18 U.S.C. §4210, "Jurisdiction of Commission". Section 4210 in material portion states:

> (e) A parolee shall remain in the legal custody and under the control of the Attorney General until the expiration of the maximum term or terms for which such parolee was sentenced.
>
> (f) Except as otherwise provided in this section the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced...
>
> (g) In the case of any parolee **found** to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for *the period during which the*

parolee so refused or failed to respond.
[Emphasis supplied]

Barrier v. Beaver, 712 F.2d 231, 235-36 (6th Cir. 1983).

In Barrier, the parole revocation warrant which alleged the three non-criminal conduct violations of parole, *viz*: (1) failure to report as directed from October 15, 1975 to January 9, 1976; (2) failure to submit supervision reports for the months of October, November and December, 1975; and (3) failure to report change of residence was properly filed as a detainer against Barrier and not unlawfully executed at the time of Barrier's arrest. As such, all of Barrier's statutory and constitutional rights that arose out of the lodging of the warrant as a detainer had been properly protected. Therefore, based upon the charges set out in the original warrant, Barrier was found to be an absconder. As a result, Barrier's maximum term of supervision was extended for the period of time from the issuance of the warrant until its subsequent execution on July 28, 1979. See 18 U.S.C. §4210(c).

In contrast to those facts present in Barrier, in the case at bar, the initial warrant issued by the Parole Commission in March 1992 and executed on Vershish on April 9, 1999, provided the basis of the statutory violation. It is the execution of the March 1992 warrant, without the mandatory revocation hearing, that Vershish argued and the Sixth Circuit Court of Appeals found to be a violation of

his rights. It is undisputed that Vershish was never afforded his mandatory revocation hearing upon execution of the March 1992 warrant. As a result, the Parole Commission is unable to now proceed with a revocation hearing for the violations set forth in the March 1992 warrant.

That being the case, if the Parole Commission cannot proceed with the March 1992 warrant as set forth in the Court of Appeal's opinion, then based upon the plain language of Barrier, and the relevant statutes, the January 12, 2000 warrant is untimely due to the fact that their can be no formal finding of absconding by the Parole Commission. 28 CFR 2.48-06(a)(1) provides in pertinent part:

> In the case of an absconder, violations that occurred after the normal expiration of supervision may be included on the supplemental warrant application. (See paragraph (a)(2)(A) below).

Additionally, 28 CFR 2.48-06(a)(2)(A) provides:

> (2)(A) Violations of parole occurring after the normal expiration of supervision may be added to an outstanding warrant if the parolee is an absconder from supervision from whom a timely warrant has been issued. The supplemental warrant application should be issued as soon after the parolee's arrest as possible. *If the absconding charge cannot be sustained at*

the revocation hearing, such supplemental charges may not be used to revoke parole or forfeit street time.

As such, without the ability to proceed under the March 1992 warrant, there can be no finding by the Parole Commission as required by 18 U.S.C. §4210(c) and 28 CFR 2.48-(a)(2)(A) that Vershish absconded. Since the supplemental warrant filed after the expiration of Vershish's original term fails to re-allege absconding and only alleges new criminal conduct, the Parole Commission will be without authority to address the supplemental warrant. The non-criminal violations that alleged absconding were extinguished along with the March 1992 warrant due to the Parole Commission's violation of 18 U.S.C. §4210(c). Put in its simplest form, without the ability to proceed under the March 1992 warrant, the Parole Commission's jurisdiction of Vershish could not be extended and actually expired on July 18, 1994. No other warrant was filed by the Parole Commission prior to the expiration of Vershish's original term and since the issue of absconding is no longer before the Parole Commission, Vershish's original term can no longer be extended pursuant to 18 U.S.C. §4210(c).

Additionally, if the Court of Appeals decision is to be read to allow the Parole Commission to proceed with both the original parole violator warrant and the subsequently filed supplemental warrant (a position that

appears to be directly inconsistent with the plain language of the original opinion of the court of appeals) then the defendant would be entitled to credit from the time of the execution of the original warrant until the time of his release. See Thompson v. Crabtree, 82 F.3d 312, 316 (9th Cir. 1996) citing Still v. United States Marshal, 780 F.2d 848 (10th Cir. 1985).

In Thompson v. Crabtree, supplemental warrants were issued and timely lodged as detainers by the Parole Commission prior to the termination of Thompson's original parole term. However, the Court in Crabtree did not limit the credit he was to receive against his sentence up to the time the supplemental warrants were issued; instead it ordered full credit from the time of his initial detention in November 1988. (Id.) In the case at bar, the supplemental warrant was filed after the expiration of Vershish's original parole term. As such, while it is true that the issuance of a warrant operates to bar the expiration of the violator sentence, see 28 C.F.R. §2.44(d), since Vershish was prejudiced because he was unable to serve the two sentences concurrently, he would be entitled either to have the original charges dismissed from the detainer with prejudice (a result that would make the supplemental warrant untimely) or to have a prompt revocation hearing on those charges, and if parole is revoked, entitled to credit to his sentence for time served since his initial detention. See Thompson v. Crabtree, 82 F.3d 312, 316 (9th Cir. 1996)

and Still v. U.S. Marshal, 780 F.2d 848, 854 (10th Cir. 1985). As previously pointed out, Vershish served more time after the execution of the original warrant until his release on bond that he actually owed against his original sentence. Even if found to have violated his parole, he would be ordered to receive jail credit in excess of his entire remaining sentence.

The Sixth Circuit's decision to toll the running of the expiration of the Petitioner's parole term and therefore only grant credit of 278 days (the time he spent in custody from April 9, 1999 to January 12, 2000) on any parole violation sentence imposed is directly inconsistent with both the Ninth and Tenth Circuit decisions in Crabtree and Still. Conversely, if the Sixth Circuit opinion directs the Parole Commission to dismiss the original warrant, the Commission would be without jurisdiction to proceed with the supplemental warrant since it was filed after the expiration of the Petitioner's original parole term and no formal finding of absconding can be made as required by 28 CFR 2.48-06(a)(2)(A). Therefore, the Petitioner is entitled to credit against his original sentence in excess of the total amount of time he owed. Therefore, upon revocation, the Parole Commission could not sentence him to any additional time in jail. As such, the writ of habeas corpus should be granted in light of the fact that any additional incarceration would be in violation of the Petitioner's due process rights and in excess of the

maximum sentence that could be imposed upon a finding that the Petitioner violated his parole.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the Sixth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER, DENYING PETITION
FOR PANEL REHEARING
FILED JUNE 15, 2005

Case No. 04-5122

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

FILED
June 15, 2005

Leonard Green,
Clerk

JOSEPH VERSHISH,
Petitioner - Appellant,

v.

UNITED STATES OF AMERICA; UNITED STATES PAROLE COMMISSION; UNITED STATES MARSHAL SERVICE, for the Western District of Tennessee,
Respondents - Appellees.

BEFORE: KENNEDY, MARTIN and MOORE, Circuit Judges

Upon consideration of the petition for rehearing filed by the appellant.

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR PANEL REHEARING
FILED MAY 25, 2005

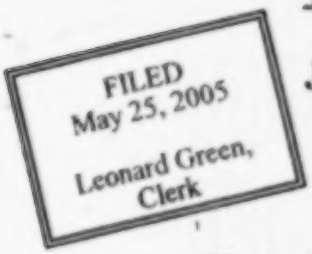
B-1 through B-16

Case Nº 04-5122

In The

United States Court of Appeals

For The Sixth Circuit



JOSEPH VERSHISH,
Petitioner - Appellant,

v.

UNITED STATES OF AMERICA;
UNITED STATES PAROLE COMMISSION;
UNITED STATES MARSHAL SERVICE,
FOR THE WESTERN DISTRICT OF TENNESSEE,
Respondents - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

RULE 40 - PETITION FOR PANEL REHEARING

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CASE NO. 04-5122

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH VERSHISH

Plaintiff – Appellant

vs.

UNITED STATES PAROLE COMMISISON, ET AL.

Defendant – Appellee

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

RULE 40 – PETITION FOR PANEL REHEARING

COMES NOW, your Appellant, Joseph Vershish, by and through his counsel of record, and hereby requests this Honorable Court grant a petition for panel rehearing pursuant to Federal Rule of Appellate Procedure 40. In support of said petition for rehearing your Appellant respectfully would submit the following:

POINT OF LAW AT ISSUE

Appellant respectfully submits that the Court erred in finding that the Commission retained jurisdiction over the parolee to proceed with its parole revocation charges set forth in the January 12, 2000, supplemental warrant. Based upon this Court's previous decision in Barrier v. Beaver, 712 F.2d 231 (6th Cir. 1983), as well as, CFR 2.48-06(a)(2)(A), the Appellant's original parole term actually expired, prior to the issuance of the supplemental warrant of January 12, 2000, due to the Parole Commission's inability to proceed under the original parole warrant. As such, the court's reliance on the supplemental warrant is in error.

Alternatively, if this court is of the opinion that the Parole Commission can proceed with the administrative charges set forth in the original parole warrant, Appellant must receive credit against the maximum sentence from the time of the execution of the warrant until the date of the actual hearing (or in this case his release on bond) not as of the date of the supplemental warrant, as ordered by the Court.

FACTS RELEVANT TO PETITION FOR REHEARING

Joseph Vershish was sentenced on February 28th, 1986 in the United States District Court for the Southern District of Florida to nine (9) years confinement for conspiracy to import methaqualone (R.1, Petition for Writ of Habeas Corpus, p. 3). Vershish was paroled from that sentence on September 13th, 1990 (R.1, Petition for Writ of Habeas Corpus, p. 3 & Exhibit A). On March 27th, 1992, the United States Parole Commission issued a parole violator warrant charging Vershish with three (3) administrative violations (R.1, Petition for Writ of Habeas Corpus, p. 3 & Exhibit A). Vershish's original sentence was scheduled to expire on July 18, 1994 (R.5, Response in Opp. to Petition, Exhibit D).

On April 9, 1999, Vershish was arrested pursuant to the parole violator warrant previously issued on March 30, 1992. Vershish was never accorded a revocation hearing after his arrest pursuant to the parole violator warrant in violation of 18 U.S.C. §4214(c) of the Parole Commission and Reorganization Act. (Joseph Vershish v. United States Parole Commission, No. 04-5122, May 2, 2005, pg. 4) Vershish remained in custody from the time of his arrest on April 9, 1999 until January 26, 2004, when he was eventually released on an appeal bond. (Id. at pg. 2)

The Parole Commission subsequently issued a supplemental parole violator warrant on January 12, 2000 and

lodged same as a detainer against Vershish (R.5, Response in Opp. to Petition, Exhibit H). The supplemental warrant only charged Vershish's new conviction in the United State District Court in the Western District of Tennessee.[1] (Id.) The supplemental warrant did not re-allege any of the non-criminal conduct included within the first parole violator warrant nor did it allege any additional absconding charges. (Id.) To date, the supplemental warrant remains lodged as a detainer against Vershish.

---

[1] It should be note that the supplemental warrant filed on January 12, 2000 only alleged one violation of law, specifically, that on November 23, 1999, the parolee was convicted in the Western District of Tennessee for the offense of Felon in Possession of a Firearm and Possession with Intent to Use Five or more false identification documents. However, the November 23, 1999 conviction was vacated on March 14, 2003 pursuant to order granting defendant's petition for post conviction relief pursuant to 28 U.S.C. §2255. While it is true that Vershish subsequently entered a plea of guilty to the charges outlined in the supplemental warrant, that conviction was after the expiration of Vershish's parole term, even assuming the Court's analysis in the opinion is correct.

LEGAL ANALYSIS

Appellant respectfully submits that the Court erred in finding that the Commission retained jurisdiction over the parolee to proceed with its parole revocation charges set forth in the January 12, 2000, supplemental warrant. Based upon this Court's previous decision in Barrier v. Beaver, 712 F.2d 231 (6th Cir. 1983), as well as, CFR 2.48-06(a)(2)(A), the Appellant's original parole term actually expired, prior to the issuance of the supplemental warrant of January 12, 2000, due to the Parole Commission's inability to proceed under the original parole warrant. As such, the court's reliance on the supplemental warrant is in error.

Alternatively, if this court is of the opinion that the Parole Commission can proceed with the administrative charges set forth in the original parole warrant, Appellant must receive credit against the maximum sentence from the time of the execution of the warrant until the date of the actual hearing (or in this case his release on bond) not as of the date of the supplemental warrant, as ordered by the Court.

It is undisputed that Vershish's original parole term was set to expire on July 18, 1994. It is further undisputed that the supplemental warrant (January 12, 2000) was filed after the expiration of Vershish's original parole term. As such, in order for the parole commission to be able to rely upon the supplemental warrant filed on January 12, 2000,

their jurisdiction over Vershish would need to have been extended. In its opinion the Court relying upon **Barrier v. Beaver**, 712 F.2d 231, 236-37 (6th Cir. 1983), concluded that Vershish's parole term resumed to run when the March 1992 warrant was executed and his parole term was subsequently tolled again upon the issuance of the January 12, 2000 supplemental warrant. It is this reading of **Barrier** that Vershish submits is misplaced.

In Barrier, this court found that the parole commission was authorized to issue parole violation warrants by 18 U.S.C. §4213. (Id. at 235) Section 4213 provides in pertinent part that:

> (b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parole charged with a criminal offense, issuance of the summons or warrant may be suspended pending disposition of charge.

This section is implemented by 28 C.F.R. §2.44, which regulation reads:

> (b) Any summons or warrant under this section shall be issued as soon as

practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be withheld, or a warrant may be issued and held in abeyance pending disposition of the charge.

(c) A summons or warrant may be issued only with the prisoner's maximum term ...

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commissions' jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to the revocation of parole and forfeiture of time pursuant to §2.52(c).

While this court's reliance upon the Barrier decision up to this point in the analysis is correct, it is the next step taken by the Court in Barrier that is directly conflicting with the conclusion drawn by this panel. Specifically, in Barrier, the Court went on to state that 28 C.F.R. §2.44, particularly subsection (d), must further be construed consonant with the

statutory delineation of the Parole Commission's jurisdiction as enunciated by 18 U.S.C. §4210, "Jurisdiction of Commission". Section 4210 in material portion states:

> (a) A parolee shall remain in the legal custody and under the control of the Attorney General until the expiration of the maximum term or terms for which such parolee was sentenced.
> (b) Except as otherwise provided in this section the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced...
> (c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for *the period during which the parolee so refused or failed to respond.* [Emphasis supplied]

Barrier v. Beaver, 712 F.2d 231, 235-36 (6th Cir. 1983).

In Barrier, the parole revocation warrant which alleged the three non-criminal conduct violations of parole, *viz*: (1) failure to report as directed from October 15, 1975 to January 9, 1976; (2) failure to submit supervision reports for the

months of October, November and December, 1975; and (3) failure to report change of residence was properly filed as a detainer against Barrier and not unlawfully executed at the time of Barrier's arrest. As such, all of Barrier's statutory and constitutional rights that arose out of the lodging of the warrant as a detainer had been properly protected. Based upon the original warrant, Barrier was found to be an absconder. As a result, Barrier's maximum term of supervision was extended for the period of time from the issuance of the warrant until its subsequent execution on July 28, 1979. See 18 U.S.C. §4210(c).

In contrast to those essential facts in Barrier, in the case at bar, the initial warrant issued by the Parole Commission in March 1992 and executed on Vershish on April 9, 1999 establishes the very basis of Vershish's statutory violation. It is the execution of the March 1992 warrant without the mandatory revocation hearing that Vershish argued and this Court found to be a violation of his rights. It is undisputed that Vershish was never afforded his mandatory revocation hearing upon execution of the March 1992 warrant. As a result, the Parole Commission is unable to now proceed with a revocation hearing for the violations set forth in the March 1992 warrant.

That being the case, if the Parole Commission cannot proceed with the March 1992 warrant as set forth in the Court's opinion, the January 12, 2000 warrant is untimely. 28 CFR 2.48-06(a)(1) provides in pertinent part:

> In the case of an absconder, violations that occurred after the normal expiration of supervision may be included on the supplemental warrant application. (See paragraph (a)(2)(A) below).
>
> Additionally, 28 CFR 2.48-06(a)(2)(A) provides:
>
> (2)(A) Violations of parole occurring after the normal expiration of supervision may be added to an outstanding warrant if the parolee is an absconder from supervision from whom a timely warrant has been issued. The supplemental warrant application should be issued as soon after the parolee's arrest as possible. ***If the absconding charge cannot be sustained at the revocation hearing, such supplemental charges may not be used to revoke parole or forfeit street time.***

As such, without the ability to proceed under the March 1992 warrant, there can be no finding by the Parole Commission as required by 18 U.S.C. §4210(c) and 28 CFR 2.48-(a)(2)(A) that Vershish absconded. Since the supplemental warrant filed after the expiration of Vershish's original term only alleges new criminal conduct, the Parole Commission will not address the merits of the original three administrative charges. The non-criminal violations that alleged absconding were extinguished along with the March 1992 warrant due to the Parole Commission's violation of 18 U.S.C. §4210(c). Put in its simplest form, without the ability

to proceed under the March 1992 warrant, the Parole Commission's jurisdiction of Vershish expired on July 18, 1994. No other warrant was filed by the Parole Commission prior to the expiration of Vershish's original term and since the issue of absconding is no longer before the Parole Commission, Vershish's original term cannot be extended pursuant to 18 U.S.C. §4210(c).

Alternatively, if this court is of the opinion that the Parole Commission can proceed with both parole violator warrants (a position that appears to be directly inconsistent with the plain language of the original opinion of the court) then the defendant would be entitled to credit from the time of the execution of the original warrant until the time of his release. See Thompson v. Crabtree, 82 F.3d 312, 316 (9th Cir. 1996) citing Still v. United States Marshal, 780 F.2d 848 (10th Cir. 1985). In Thompson v. Crabtree, the supplemental warrants lodged as detainers were issued by the Parole Commission prior to the termination of Thompson's original parole term. The Court in Crabtree did not limit the credit up to the time of the supplemental warrants, instead it ordered full credit from the time of his initial detention in November 1988. (Id.) In the case at bar, the supplemental warrant was filed after the expiration of Vershish's original parole term. As such, while it is true that the issuance of a warrant operates to bar the expiration of the violator sentence, see 28 C.F.R. §2.44(d), since Vershish was prejudiced because he was unable to serve the two sentences concurrently, he is entitled

either to have the original charges dismissed from the detainer with prejudice (a result that would make the supplemental warrant untimely) or to have a prompt revocation hearing on those charges, and if parole is revoked, he is entitled to credit to his sentence for time served since his initial detention. As previously pointed out, Vershish served more time after the execution of the original warrant until his release on bond that he actually owed. Even if found to have violated his parole, he would be ordered to receive jail credit in excess of his entire remaining sentence.

WHEREFORE PREMISES CONSIDERED, the Appellant's period of parole supervision expired on July 18, 1994 and no timely filed warrant currently exists as an active detainer. All supervision by the Parole Commission over the Appellant has expired. Alternatively, if the court allows the Parole Commission to proceed with the charges in the original warrant, credit must be given to Vershish against his sentence from the time of his arrest in April 1996 until his ultimate release on bond on January 21, 2004.

Respectfully submitted,
BOROD & KRAMER. PC

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(901) 524-0200
Attorney for Joseph Vershish

CERTIFICATE OF LENGTH

I, Howard B. Manis, hereby certify that the foregone brief is less than fifteen (15) pages long as required by Fed. R. of App. Pro. 40 (b).

This the 25th day of May, 2005.

/s/ Howard B. Manis
Howard B. Manis

FILING AND MAILING CERTIFICATE

In compliance with FRAP Rule 25 and L.R. 25 I hereby certify that on this 25th day of May, 2005, I filed with the Clerk's Office of the United States Court of Appeals for the Sixth Circuit the required number copies of this PETITION FOR PANEL REHEARING and further certify that I mailed via U.S. Mail this same date from Cincinnati, Ohio one copy to opposing counsel.

The necessary filing and mailing was performed in accordance with the instructions given me by counsel in this case.

/s/ Lance Gifford

Lance Gifford
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APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OPINION, FILED MAY 2, 2005

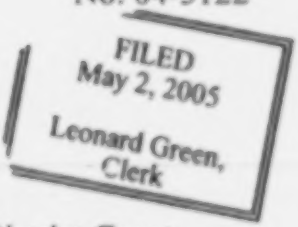
C-1 through C-10

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 05a0201p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH VERSHISH, *Petitioner-Appellant,*	)	
	)	No. 04-5122
v.	)	
UNITED STATES PAROLE COMMISSION, ET AL., *Respondents-Appellees.*	)	



Appeal from the United States District Court
for the Western District of Tennessee at Memphis.
No. 03-02858—Bernice B. Donald, District Judge.

Argued: December 10, 2004

Decided and Filed: May 2, 2005

Before: KENNEDY, MARTIN, and MOORE, Circuit Judges.

COUNSEL

ARGUED: Howard Brett Manis, BOROD & KRAMER, Memphis, Tennessee, for Appellant. Joe A. Dycus, ASSISTANT UNITED STATES ATTORNEY, Memphis, Tennessee, for Appellees.

ON BRIEF: Howard Brett Manis, BOROD & KRAMER, Memphis, Tennessee, for Appellant. William Siler, ASSISTANT UNITED STATES ATTORNEY, Memphis, Tennessee, for Appellees.

OPINION

KENNEDY, Circuit Judge. Petitioner appeals from the denial of his petition for a writ of habeas corpus in which he alleged that he was denied due process by the United States Parole Commission's failure to grant him a parole revocation hearing after he was arrested pursuant to the Commission's warrant, as required by 18 U.S.C. § 4214(c). In essence, Petitioner contends that he was prejudiced because, if he had been granted a revocation hearing, after which his parole would have been revoked, he could have then served the remaining time on his underlying sentence concurrently, rather than consecutively, with a subsequent sentence he received as a result of a conviction on a charge that was filed against him after he was arrested on the Commission's warrant. For the following reasons, we VACATE the judgment below and REMAND the case to the district court for disposition consistent with this opinion.

BACKGROUND

Petitioner Vershish was sentenced on February 28, 1986, in the United States District Court for the Southern District of Florida to thirty-five years confinement for conviction on eight counts relating to the importation, possession, and distribution of methaqualone. The Florida

district court later amended the sentence to impose a total term of nine years. On September 13, 1990, Vershish was paroled, and he was to remain under parole supervision until July 18, 1994. In early 1992, Vershish disappeared from supervision, and the United States Parole Commission issued a parole violator warrant for his arrest on March 30, 1992, charging him with several parole violations. The warrant instructed the U.S. Marshal to assume custody as soon as possible. After seven years as a fugitive, Petitioner was arrested April 9, 1999, on a facsimile copy of the Commission's warrant. Within seventeen days of this arrest, Vershish was charged with being a convicted felon in possession of a firearm and having more than five pieces of false identification. Vershish pled guilty to these charges and judgment was entered against him on November 24, 1999. He was thereafter sentenced to a term of eighty-seven months imprisonment. Although the U.S. Marshal had executed a facsimile copy of the Commission's original warrant, the Commission, nonetheless, lodged the original warrant as a detainer. On January 12, 2000, the Commission issued a supplemental warrant adding the following charges: "Law Violation: A) Felon in Possession of a Firearm, B) Possession with Intent to Use Five or More False Identification Documents, Fraud." J.A. 65 (Supplement to Warrant Application). This warrant was also lodged as a detainer against Vershish, pending completion of his new sentence.

On January 12, 2000, Vershish informed the Commission that since he was arrested pursuant to the March 1992 warrant, he was entitled to a revocation hearing. However, relying on its records from the Marshal's Service, the Commission apparently believed that the March 1992

warrant had not been executed but rather lodged as a detainer. It therefore treated Vershish's request as one for a dispositional review of the detainer. The Commission notified Vershish's prison that it would be conducting an "on-the-record" dispositional review of the detainer and requested that Vershish complete the required forms. Vershish did not respond and the Commission sent a second request on August 3, 2000. In early 2003, Vershish wrote the Commision inquiring about the review of his detainers. The Commission conducted a review and ordered that the detainers would stand. Thereafter, Vershish filed a petition for a writ of habeas corpus alleging that he was prejudiced by the Commission's failure to accord him a revocation hearing after he was arrested pursuant to the Commission's warrant. After the district court denied Vershish's requested relief, this appeal followed.

ANALYSIS

We review a district court's decision to deny a petitioner's request for a writ of habeas corpus de novo. *Asad v. Reno*, 242 F.3d 702, 704 (6th Cir. 2001). Petitioner maintains that he is entitled to a writ of habeas corpus because the Commission failed to accord him a revocation hearing after he was arrested pursuant to a parole violator warrant, in violation of 18 U.S.C. § 4214(c)[1] of the Parole Commission

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[1]This subsection provides, in relevant parts, "Any alleged parole violator who is . . . retaken by warrant . . . shall receive a revocation hearing within ninety days of the date of retaking. . . ."

and Reorganization Act.[2] After his arrest on April 9, 1999, Petitioner remained in custody until he made his appeal bond on January 26, 2004. J.A. 174, 191 (the district court granted an appeal bond on January 21, 2004, but delayed its issuance for five days). Petitioner served more time between April 9, 1999, and January 26, 2004, than that which he owed under his original sentence. Petitioner asserts that had the Commission held a revocation hearing as required, a decision to revoke his parole would have re-triggered the running of his original conviction, and he could have then served the remaining time under his original sentence and his sentence for the federal gun and fraudulent document charges concurrently rather than consecutively. Because he was prejudiced by the Commission's failure to grant him a revocation hearing, he contends, the charges in the parole violator warrant should either be dismissed or he should be accorded a revocation hearing. If he is accorded a revocation hearing and if his parole is revoked, he continues, he should be entitled to credit for the full period of time he was detained prior to this revocation hearing.

The Commission, in contrast, maintains that no violation should be found by its failure to accord Petitioner a revocation hearing. In support of this position, the Commission maintains, in reliance upon *Saylor v. U.S. Board*

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[2]Pursuant to § 11017(a) of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, certain repealed provisions of the United States Code governing federal parole, including 18 U.S.C. §§ 4201-18, remain in effect - for individuals convicted prior to November 1, 1987 - through November 1, 2005.

of Parole, 345 F.2d 100, 103 (D.C. Cir. 1965), that it should be given some reasonable time and latitude to treat its executed warrant as a detainer when, after the parolee is retaken pursuant to the Commission's warrant, new criminal charges are shortly thereafter brought against the parolee. The Commission contends that if the executed warrant were treated as a detainer, it would not have needed to accord the parolee a revocation hearing until the detainer was executed upon the expiration of the subsequent sentence. Furthermore, the Commission maintains, the Petitioner is entitled to only 17 days credit against his original sentence since he was in custody on the Commission's warrant alone only from April 9, 1999 (the date he was arrested pursuant to the parole violator warrant) until April 26, 1999 (the date the new criminal charges were filed against him).

We find *Saylor*, a case decided by another circuit more than ten years before the passage of the Parole Commission and Reorganization Act, to be unpersuasive. In *Saylor*, Cazada Saylor was convicted of bank robbery in 1947 and sentenced to a term of 30 years in prison. 345 F.2d at 101. "In 1959 he was released on parole." *Id.* Two years later, the Board of Parole issued a parole violator warrant for his arrest, "founded upon information that, among other things, state warrants had been issued . . . for [his] . . . arrest." *Id.* Thereafter, an FBI agent arrested him on June 28, 1961 pursuant to the parole violator warrant. *Id.* He was then turned over to state authorities where he was convicted and sentenced to a term of imprisonment. *Id.* Upon his release from state prison in February 1963, he was taken into custody under the parole violator warrant to serve the remaining time under his original sentence. *Id.* Saylor argued that, having

been taken into custody pursuant to a parole violator warrant on June 28, 1961, the unexpired term of his original sentence began to run as of that date. *Id.* The court disagreed, concluding that a return to federal "custody ... is not automatically effected by the mere arrest of the parolee by federal agents." *Id.* at 102. Rather, the court continued, "upon arresting a federal parolee as a parole violator, the federal authorities should have some reasonable time and latitude in deciding whether to return him to the federal institution to serve the balance of his term or to surrender him to the local authorities for state prosecution." *Id.* at 103.

The *Saylor* decision fails to support the Commission's argument in light of the clear statutory language in the Parole Commission and Reorganization Act, 18 U.S.C. §§ 4201-4218. The Commission asserts that it should be entitled, after the execution of its parole violator warrant, to hand over the parole violator to authorities for prosecution when there is a subsequent charge brought against him and to lodge the executed warrant as a detainer. Section 4214(b) specifically provides that an issued warrant may be placed against a parolee as a detainer if the parolee has been convicted of an independent criminal offense while on parole. "The Act contains no similar provision for lodging an *executed* warrant as a detainer." *Thompson v. Crabtree*, 82 F.3d 312, 315 (9th Cir. 1996). As the *Thompson* court noted, "Congress's manifest awareness of the distinction between 'issuance' of a warrant and 'execution' of . . . a warrant suggests the choice of terminology was not casual. The Act does not expressly proscribe the lodging of an executed warrant as a detainer . . . but section 4214(c)'s mandate of a hearing within ninety days of retaking is unequivocal." *Id.* We agree, and conclude

that once the warrant had been executed, the Commission could not simply withdraw it and place it as a detainer, but instead was required to accord Petitioner a revocation hearing.

Although the Commission did not accord the Petitioner a revocation hearing, the Petitioner is not entitled to credit against his original sentence for the entire time he spent in custody after the execution of the parole violator warrant. When the March 1992 warrant was executed at the time of the Petitioner's April 9, 1999, arrest, the Petitioner's parole term resumed. *Barrier v. Beaver*, 712 F.2d 231, 236-37 (6th Cir. 1983). The Petitioner's parole term was tolled, however, upon the issuance of the January 12, 2000, supplemental warrant. *Id.* Thus, the Petitioner is entitled to 278 days (from April 9, 1999, to January 12, 2000) credit against his parole term.

The Commission argues, however, that since the Petitioner was detained under its authority only from April 9, 1999 (the date the parole violator warrant was executed) to April 26, 1999 (the date the new charges were brought against him), the Petitioner should be entitled to only 17 days credit for its failure to grant him a revocation hearing. The Petitioner's parole term was not tolled on April 26, 1999, when he was charged with subsequent offenses. *See Thompson*, 82 F.3d at 314, 316 n.8 (the parolee's original sentence was tolled, not when he was charged with additional offenses after he was arrested pursuant to a parole violator warrant, but when the supplemental warrant was lodged as a detainer). Nor was the Petitioner's parole term tolled when he was convicted of subsequent charges on November 24, 1999. *See Still v. U.S. Marshal*, 780 F.2d 848, 853-54 (10th Cir.

1985) (the parolee was entitled to credit against his unexpired original sentence for all the time he served once he was taken into custody pursuant to the Commission's parole violator warrant, despite the fact that he was convicted of a charge after the warrant was executed).

The Commission retained jurisdiction to proceed with its parole revocation charges since the Petitioner's parole term did not expire, but rather, as noted above, was tolled upon the issuance of the January 12, 2000, supplemental warrant. Pursuant to 18 U.S.C. § 4214, an alleged parole violator retaken by the Commission has a right to "a preliminary hearing . . . to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause . . . a revocation hearing." 18 U.S.C. § 4214(a)(1)(A) and (B). The Petitioner never received either a preliminary hearing or a revocation hearing. The judgment entered against the Petitioner on November 24, 1999, obviated any further need for a preliminary hearing. *See* 18 U.S.C. § 4214(b)(1) (noting that conviction for a criminal offense satisfies the preliminary hearing requirement); *Moody v. Dagget*, 429 U.S. 78, 86 n.8 (1976). However, the Petitioner is still entitled to a revocation hearing.

Thus, we VACATE the judgment below and REMAND to the district court with instructions to conditionally grant a writ of habeas corpus with respect to Petitioner's original 1986 federal sentence unless the Commission (1) takes the Petitioner into custody on the outstanding parole violation warrant within sixty days of the district court's order modifying the judgment in this case, (2) accords the Petitioner a parole revocation hearing within sixty

days of taking him into custody on the outstanding parole violation warrant, and (3) credits the Petitioner with 278 days (the time he spent in custody from April 9, 1999, to January 12, 2000) on any parole violation sentence imposed.

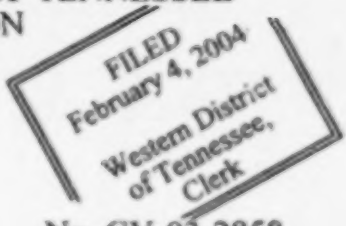
APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

ORDER ON MOTION TO CLARIFY, ALTER, OR AMEND ORDER OF DISMISSAL AND MOTION FOR BOND, FILED FEBRUARY 4, 2004

D-1 through D-3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION



Joseph Vershish,
Petitioner,

v. No. CV-03-2858

Unites States Parole Commission, et al

ORDER ON MOTION TO CLARIFY, ALTER, OR AMEND ORDER OF DISMISSAL AND MOTION FOR BOND

This matter came to be heard on Petitioner's Motion to Clarify, Alter, or Amend Order of Dismissal previously entered by this Honorable Court on November 25, 2003. Based upon the entire record before this Court and arguments of Counsel, the Motion to Clarify, Alter or Amend should be denied in part and granted in part.

Petitioner's request to reconsider the Court's previous ruling denying his Writ of Habeas Corpus relief is denied.

Petitioner's has previously filed a notice of appeal on ths Court's ruling denying his petition for Writ of Habeas Corpus.

Petitioner's request to reconsider the Court's ruling denying Petitioner's release on bond pending appeal of this ruling is hereby granted. The Court is of the opinion that this case involves special circumstances sufficient to provide for the granting of a bond pending final resolution of this matter on appeal.

IT IS THEREFORE ORDERED pursuant to Federal Rule of Appellate Procedure 23 (b) (3) that the Petitioner be released on bond pending the resolution of the appeal of this Court's Order denying his Writ of Habeas Corpus, under the following restrictions and requirements: (1) upon the making of a $100,000.00 unsecured bond, (2) surrender Petitioner's passport to the Clerk of Court, if not already surrendered, (3) appear for weekly reporting to pre-trial services officers, restrict all travel to Western District of Tennessee unless previous permission has been obtained from either the Court or the pre-trial services officer, and (4) reside at the home of Jerry Griffith at all times while remaining out on bond. Mr. Griffith has previously agreed to supervise the Petitioner's release on bond pending appeal of his sentence in a related matter.

IT IS HEREBY ORDERED that Petitioner's Motion be denied in part and granted in part consistent with the language set forth above.

THIS THE 4 DAY OF February, 2004.

/s/ Bernice Donaid
HONORABLE JUDGE BERNICE DONALD
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

JUDGMENT ON CIVIL CASE,
FILED NOVEMBER 26, 2004

E-1 through E-1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Joseph Vershish,
Petitioner,

v. Civil No. 03-2858-D/P

Unites States Parole Commission, et al.
Respondent.

JUDGMENT IN CIVIL CASE

Decision by Court. This action came for consideration before the Court. The issues have been duly considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with the provisions as set forth in the Order of Dismissal and Order Certifying Appeal Not Taken In Good Faith, entered November 25, 2003, this case is hereby DISMISSED.

/s/ Bernice D. Donald
BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE

November 26, 2003
Date

Robert R. DiTrolio
Clerk

/s/ Earline Grayer
(By) Deputy Clerk

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

ORDER OF DISMISSAL
AND ORDER CERTIFYING APPEAL
NOT TAKE IN GOOD FAITH,
FILED NOVEMBER 25, 2004

F-1 through F-10

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JOSEPH VERSHISH,
Petitioner,

v. No. 03-2858-D/P

UNITES STATES PAROLE COMMISSION, ET AL.
Respondent.

ORDER OF DISMISSAL
AND
ORDER CERTIFYING APPEAL
NOT TAKEN IN GOOD FAITH

Petitioner, Joseph Vershish, an inmate at the West Tennessee Detention Facility at Mason, through counsel, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner alleges that the United States Parole Commission (USPC) violated his rights by failing to provide a prompt revocation hearing and that he is entitled to immediate release. On November 24, 2003, the United States filed its response to the petition.

Petitioner was originally convicted of one count of conspiracy to import methaqualone (count one), and seven additional counts, including conspiracy to possess/distribute methaqualone, conspiracy to create counterfeit substance, aiding and abetting, importation of methaqualone, traveling

interstate commerce and distribute proceeds of illegal transactions in the United States District Court for the Southern District of Florida. On February 28, 1986, petitioner was sentenced to a five year term of imprisonment on count one, along five years imprisonment on counts two through six, to be served consecutively to the sentence imposed on count one and to each other, and a five year of imprisonment on count eight, to be served concurrently to other sentences imposed. The sentence was amended on May 26, 1989, and petitioner was sentenced to a total term of nine years imprisonment, along with a five year special parole term. Petitioner was then convicted in a separate criminal case in the United States District Court for the Southern District of Florida. On November 24, 1985, petitioner was sentenced to a concurrent term of five years imprisonment for the offense of conspiracy to import cocaine.

On September 13, 1990, petitioner was paroled, and he was to remain under parole supervision until July 18, 1994. Upon completion of his regular parole term, petitioner was to begin his five-year term of special parole on July 14, 1994, which would continue until July 13, 1999. On March 16, 1992, petitioner's probation officer informed the Parole Commission that petitioner was in violation of the conditions of his parole. Petitioner's whereabouts were unknown as of February 11, 1992. The Commission issued a warrant on March 30, 1992, charging petitioner with violating his parole

by falsifying supervision reports, failing to submit supervision reports, and failing to report a change in residence. The warrant contained instructions to the United States Marshals to assume custody as soon as possible, but noted that if petitioner was already in the custody of federal or state authorities, the warrant was not to be executed but lodged as a detainer.

On April 9, 1999, petitioner was arrested by in the Western District of Tennessee, and was ultimately convicted on November 23, 1999, for the offense of felon in possession of a firearm and possession with intent to use five or more false identification documents. Petitioner's probation officer advised the Parole Commission that petitioner had been arrested, convicted, and sentenced to eighty-seven months imprisonment, eighty-four months imprisonment. The probation officer requested that an amended warrant be issued. On December 20, 1999, the marshals service advised the Parole Commission that the warrant was being returned unexecuted because petitioner had been sentence to a term of eighty-seven months on the new charges. Also on December 20, 1999, the Parole Commission received notice that the parole violator warrant had been filed as a detainer. On January 12, 2000, the Parole Commission supplemented the warrant with the new violations of the law.

On January 18, 2000, petitioner advised the Parole Commission that he had been arrested on the parole violator warrant on April 6, 1999, and requested a parole revocation hearing. Because the Parole Commission had been advised that its warrant had been lodged as a detainer, petitioner's letter was noted as a request for a dispositional review of the detainer. Petitioner did not receive the Parole Commission's letter dated February 7, 2000, that the Commission would be conducting an "on-the-record" dispositional review of the detainer due to his transfer to another district. On October 1, 2002, petitioner's probation officer advised the Parole Commission that petitioner had been sentenced on April 22, 2002, in the United States District Court for the Central District of California to a term of eighty-seven months for conspiracy to engage in money laundering. On November 4, 2002, the Parole Commission supplemented the warrant with those new convictions.

Petitioner wrote the Parole Commission in January and February 2003, inquiring as to the dispositional review. The review was conducted on March 21, 2003. By a notice of action dated April 10, 2003, the Commission ordered that the detainer stand.

Petitioner contends that the parole violator warrant was originally executed on him on April 9, 1999, and was never properly withdrawn. Petitioner contends that the

detainer will cause him to remain incarcerated should this Court grant bond on the appeal of his resentencing in the underlying criminal conviction in this district.

The United States apparently concedes that petitioner was taken into custody by the marshal service acting under the outstanding parole violator warrant on April 9, 1999. Petitioner's criminal case in this district, No. 99-20156, reflects a criminal complaint was lodged against him on April 26, 1999. The United States was granted an extension of time to file an indictment, and on June 22, 1999, petitioner was indicted on federal offenses committed in this district.

Under the holding of Saylor v. United States Board of Parole, 345 F.2d 100, 103 (D.C. cir. 1965), "federal authorities should have some reasonable time and latitude in deciding whether to return (a violator) to the federal institution to serve the balance of his term or to surrender him to the local authorities for state prosecution." Although Saylor arose from the violator's surrender to state authorities for prosecution, its reasoning is applicable to the decision to prosecute petitioner for federal crimes committed while in this district.

Habeas relief pursuant to constitutional due process protections recognized in Morrissey v. Brewer, 408 U.S. 471 (1972), is only available where a petitioner establishes that the

Parole Commission's delay in holding a revocation hearing was both unreasonable and prejudicial. Carlton v. Keohane, 691 F.2d 992, 003 (11th Cir. 1982). Here, petitioner was a fugitive for over seven years during which time he committed multiple offenses in the Western District of Tennessee and Central District of California. Upon petitioner's apprehension, the Parole Commission was advised by both petitioner's probation officer and the marshals service, that its warrant was lodged as a detainer. Whether correctly or incorrectly advised, upon petitioner's request for a hearing, the Commission treated the warrant as a detainer and provided petitioner with a timely dispositional review in accordance with 18 U.S.C. § 4212 (b) (1).

Although petitioner had advised the Parole Commission by letter of January 18, 2000, that he had been arrested on the warrant, he did not contest the Commission's decision to treat his request for a revocation hearing as a request for dispositional review. Rather, after petitioner' s transfer to another facility delayed his review, he merely inquired as to the status of his dispositional review, not the status of any revocation hearing. To the extent he contended that the Parole Commission was wrong to treat the warrant as a detainer, the appropriate remedy for a default under 18 U.S.C. § 4214 (c), is a writ of mandamus to compel the Commission's compliance with the statute, not a writ of habeas corpus to compel release on parole or to extinguish the

remainder of the sentence. See Carlton, 691 F. 2d at 993; Harris v. Day, 649 F.2d 755, 762 (10th Cir. 1981); Northington v. U.S. Parole Comm'n, 587 F.2d 2, 3 (6th Cir. 1978).

Petitioner was under custody on other criminal sentences from two districts. Any delay in holding a revocation hearing was not unreasonable based upon the information provided to the Parole Commission and petitioner's failure to contest its treatment of the warrant as a detainer. Petitioner contends that even he did not discover the details of the actual execution of the warrant until the middle of 2001 until early 2003. The Parole Commission indicates it is now ready to begin revocation proceedings. Petitioner has not established either unreasonable or prejudicial delay. Accordingly, the petition is DENIED.

Appeals of habeas petitions under 28 U.S.C. § 2254 and motions under 28 U.S.C. § 2255 are governed by 28 U.S.C. § 2253 and require the district court to consider whether to issue a certificate of appealability. Lyons v. Ohio Adult Parole Auth., 105 F.3d 1063 (6th Cir. 1997). Section 2253 does not apply to habeas petitions by federal prisoners under § 2241. McIntosh v. United States Parole Comm'n, 115 F.3d 809, 810 (10th Cir. 1997); Ojo v. I.N.S., 106 F.3d 680, 681-82 (5th Cir. 1997); Bradshaw v. Story, 86 F.3d 164, 166 (10th Cir. 1996). Nevertheless, a habeas petitioner seeking to

appeal is still obligated to pay the $105 filing fee required by 28 U.S.C. §§ 1913 and 1917.[1] After the amendment of 28 U.S.C. § 1915 by the Prison Litigation Reform Act of 1995 (PLRA), Title VIII of Pub. L. 104-134, 110 Stat. 1321 (1996), it is unclear how habeas petitioners establish a right to proceed in forma pauperis and avoid this filing fee.

Although the Sixth Circuit has concluded that the various filing fee payment requirements and good faith certifications of amended § 1915 do not apply to § 2254 cases, it has not resolved whether these requirements apply to § 2241 cases. Kincade v. Sparkman, 117 F.3d 949, 951-52 (6th Cir. 1997). Cf. McGore v. Wrigglesworth, 114 F. 3d 601 (6th Cir. 1997) (instructing courts regarding proper PLRA procedures in prisoner civil- rights cases, without mentioning § 2241 petitions). The Tenth Circuit, however, has held that the provisions of the PLRA do not apply to habeas cases of any sort or to § 2255 motions. See McIntosh, 115 F. 3d at

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[1]The fee for docketing an appeal is $100. See Judicial Conference Schedule of Fees, ¶ 1, Note following 28 U.S.C. § 1913. Under 28 U.S.C. § 1917, a district court also charges a $5 fee:

> Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari $5 shall be paid to the clerk of the district court, by the appellant or petitioner.

810; United States v. Simmonds, 111 F.3d 737, 743 (10th Cir. 1997). Because the Court finds the reasoning of McIntosh persuasive, and because the Court finds that this conclusion naturally follows from the Sixth Circuit's decision in Kincade, the Court concludes that the PLRA does not apply to § 2241 petitions.

Pursuant to Kincade, a petitioner must seek leave to proceed in forma pauperis from the district court under Fed. R. App. 24 (a), which provides:

> A party to an action in a district court who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave to so proceed, together with an affidavit, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay fees and costs or to give security therefor, the party is belief that that party is entitled to redress, and a statement of the issues which that party intends to present on appeal.

The Rule further requires the district court to certify in writing whether the appeal is taken in good faith, and to deny the certificate if the appeal would be frivolous.

The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issue presented is frivolous. Id. The same considerations that lead the Court to dismiss this petition as devoid of merit also compel the conclusion that an

appeal would be frivolous. It is therefore CERTIFIED, pursuant to F .R.A. P. 24 (a) , that any appeal in this matter by petitioner is not taken in good faith, and he may not proceed on appeal in forma pauperis.

IT IS SO ORDERED this 25 day of November, 2003

/s/ Bernice B. Donald
BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE